

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

Michael A. Danello

v.

Civil No. 11-cv-212-LM

Concord General Mutual
Insurance Co. et al.

O R D E R

In this action, filed by plaintiff, Michael Danello, individually and in his capacity as executor of the estate of Anita Danello, the court issued an order (doc. no. 30), dismissing the claims asserted in the case without prejudice. The court hereby clarifies the purpose and intended effect of the order at issue (doc. no. 30).

Background

Mr. Danello filed this action in state court against parties including an insurer, Concord General Mutual Insurance Company ("Concord General"), to resolve insurance coverage issues relating to a March 2010 fire that occurred in a house where Mr. Danello was living at the time. Mr. Danello named additional parties as defendants, including the Secretary of the United States Department of Housing and Urban Development ("HUD") and Financial Freedom Acquisition LLC ("FFA"), to

resolve any claims that they might have as to the insurance proceeds, given that the property had been the subject of a foreclosure sale in March 2010. HUD removed the action to this court in May 2011.

Defendants FFA and HUD answered the petition and filed cross-claims and counterclaims. FFA asserted cross- or counterclaims against all parties, seeking a judicial declaration that "to the extent this court finds pursuant to the Verified Petition, that [the insurance] policy was triggered, then it should also find that the policy must be paid, in whole or in part, to FFA as mortgagee for the benefit of FannieMae and/or the Federal Housing Administration (FHA)." HUD responded to FFA's cross-claim and asserted cross-claims against Concord General. Concord General has denied liability on all claims and cross-claims asserted in this action. Mr. Danello has not filed a response to the counterclaim asserted against him by FFA.

At the time plaintiff filed this action, he was represented by counsel, Attorney Bertrand Zalinsky. The court granted Attorney Zalinsky's motion to withdraw as counsel on July 27, 2011, and instructed plaintiff at that time to file an appearance by August 18, 2011. In a subsequent order (doc. no. 29), the court specifically directed Mr. Danello, in his

capacity as executor of the estate, to file an appearance of counsel by September 13, 2011. When Mr. Danello failed to file any appearance thereafter, pro se or otherwise, and also failed to file any response to FFA's counterclaim, the court issued an order dismissing the claims in the case, which the clerk docketed as an entry of default (doc. no. 30). When the clerk docketed the entry of default, the docket entry indicated that the case was closed.

The reason for issuance of that order was plaintiff's failure to file any appearance, pro se or through counsel, after the court granted Attorney Zalinsky's motion to withdraw. See Order (doc. no. 28) (granting counsel's motion to withdraw (doc. no. 27)). The reason for the clerk's entry of a default was Mr. Danello's failure to file any response to FFA's counterclaim, which was due on August 25, 2011. See Endorsed Order (July 27, 2011) (granting motion to extend time to answer (doc. no. 26)). Therefore, while the order at issue (doc. no. 30) dismissed without prejudice Mr. Danello's claims and had the unintended effect of closing the case, the order was not intended to preclude defendants from litigating, in this case, any counterclaims or cross-claims that may be properly asserted here, pursuant to Fed. R. Civ. P. 13.

Conclusion

For the foregoing reasons, the clerk shall reopen the case, so that defendants may litigate, in this action, any counterclaims or cross-claims that may be properly asserted in this action, pursuant to Fed. R. Civ. P. 13. The clerk's office is directed to provide notice of this order to all counsel of record, and to provide a copy to Michael Danello by providing notice thereof to Attorney Zalinsky and by mailing a copy to Mr. Danello at the following address: 28 South Bow St., Apt. 3, Milford, MA 01757.

SO ORDERED.



Landya B. McCafferty
United States Magistrate Judge

September 22, 2011

cc: Michael A. Danello
Gordon A. Rehnborg, Jr., Esq.
Michael T. McCormack, Esq.
Andrew R. Schulman, Esq.
Bertrand Zalinsky, Esq.

LBM:nmd